



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31839868

Date: JULY 18, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business executive, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motion and remand the matter for further proceedings.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. Specifically, the Petitioner disputes our conclusion that the record contains discrepancies relating to his compensation.

A petitioner can establish extraordinary ability by submitting evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), and then establishing, through a final merits determination, that the individual has achieved sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

The Director concluded that the Petitioner had met only one of the ten criteria, relating to performing in a leading or critical role for an organization or establishment that has a distinguished reputation. In our appellate decision, we granted a second criterion, relating to published material about the individual in professional or major trade publications or other major media. *See* 8 C.F.R. § 204.5(h)(3)(viii) and (iii).

The outcome of the appeal hinged on 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In our December 2023 appellate decision, we acknowledged the Petitioner's submission of salary survey data, and did not question the reliability or accuracy of that data. Instead, our decision focused on perceived discrepancies in the Petitioner's own salary information.

We agreed with the Director that the Petitioner had submitted two different sets of salary figures for 2019-2021. We determined that the discrepancies cast doubt on the reliability and credibility of the financial evidence in the record. We cited *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), which requires a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies. We concluded: "Because the Petitioner has not reliably established his annual income amounts, he has not demonstrated that he has commanded a high salary in relation to others in the business management field."

Our conclusion about the reliability of the Petitioner's evidence rested significantly on an apparent discrepancy in the Petitioner's tax documents for 2021. In particular, tax documents submitted with the petition show a ¥730,715 tax payment on June 6, 2021, that does not appear on revised documents submitted in response to a request for evidence. We stated that "[t]he second tax record set supports the Petitioner's claimed income amounts" for 2019 and 2020, but that "his claimed annual income amounts for 2019 and 2020 . . . lack credibility" because the perceived discrepancy in the 2021 documents raised broader questions of credibility.

Review of the record shows that the June 2021 tax payment consistently appears in the Chinese-language tax documents the Petitioner has submitted. The payment is missing only from the English translation of one of those documents. Thus, the major discrepancy we identified in our decision is attributable to a translation error.

The Petitioner's submission of two different sets of salary figures raises questions. But we must also acknowledge the Petitioner's submission of tax documents to corroborate the second version of those figures. Even if there is some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, the petitioner has satisfied the standard of proof. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Also, the difference between the two sets of figures does not appear to be so great that the Petitioner's salary would qualify as high under one set but not the other.

Upon reconsideration, we conclude that the Petitioner has met his burden of proof to meet a third regulatory criterion at 8 C.F.R. § 204.5(h)(3). This, by itself, is not sufficient to establish eligibility

for the highly restrictive immigrant classification he seeks. The next step is the final merits determination described in *Kazarian*.

The Director's decision denying the petition did not include a final merits determination. Therefore, we will remand the matter to the Director for such a determination. The Director must evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3).

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.